

MYERS KELLER  
COMMUNICATIONS LAW GROUP

1522 K Street, N.W., Suite 1100

Washington, D.C. 20005

Phone (202) 371-0062

Fax (202) 371-1136

E-mail [jlazrus@myerskeller.com](mailto:jlazrus@myerskeller.com)

<http://www.myerskeller.com>

RECEIVED

SEP 27 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Richard S. Myers

Jay N. Lazrus\*

\* Also admitted to Maryland

James J. Keller+

+Communications engineer  
(Non-lawyer)

Monday, September 27, 1999

VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
The Portals  
TW-A325  
445 Twelfth Street, S.W.  
Washington, DC 20554

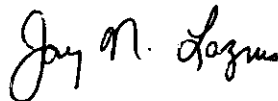
RM-9718

Re: PetroCom License Corporation  
Reply Comments in RM 97-18

Dear Ms. Salas:

Enclosed please find an original and four copies of PetroCom License Corporation's reply comments in RM 97-18. Please date stamp the enclosed file copy and return it with the courier to our office. If you have any questions regarding this matter, please telephone me at (202) 371-0062.

Very truly yours,



Jay N. Lazrus

Enclosure

No. of Copies rec'd 0 + 4  
List ABCDE

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Amended Petition For )  
Rulemaking To Amend Parts 21 )  
and 74 of the Commission's )  
Rules to Permit Licensing In )  
The Multipoint Distribution )  
Service and the Instructional )  
Television Fixed Service For )  
The Gulf of Mexico )

RM-9718

RECEIVED  
SEP 27 1999  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

REPLY COMMENTS

PetroCom License Corporation ("PetroCom") submits the following reply comments in the captioned matter.

**A. Introduction**

1. Although the Wireless Communications Association International, Inc. ("WCA") opposed PetroCom's amended petition for rule making,<sup>1</sup> it stated that "WCA must stress that it is not unalterably opposed to the use of MDS and ITFS spectrum in the Gulf of Mexico." WCA Opposition at 3. WCA questions whether "legitimate demand" exists for MDS/ITFS services and whether existing license holders will have adequate protection and a fair system for auctioning the right to serve the Gulf. Id. at 3-4.

2. Contrary to WCA's assertion, the showings PetroCom has made to justify MDS/ITFS licensing in the Gulf do not fall short.

---

<sup>1</sup> "Opposition To Petition For Rule Making" filed on September 10, 1999 [hereinafter "WCA Opposition"].

In any event, the issues raised by WCA can be dealt with in the rule making proceeding. They certainly do not justify foregoing such a proceeding altogether, especially given that WCA is not unalterably opposed to MDS/ITFS licensing in the Gulf.<sup>2</sup> Indeed, WCA's "Opposition" makes it clear that its members would like very much to provide service to that area. A rule making is the appropriate way to address and accommodate WCA's concerns.

**B. Existing Licensed Spectrum Does Not Meet Demand For Certain Services**

3. PetroCom is unaware of any network licensed on a wide area basis in the Gulf that provides digital, point-to-multipoint "last mile" services that include both voice and data services such as video surveillance, video conferencing, dedicated data circuits, dedicated Supervisory Control and Data Acquisition circuits, and ISDN technology at the efficiencies and low costs achievable on its MDS/ITFS network. Cellular systems, for example, may achieve data rates ranging from 4.8 to 9.6 kbs, compared to data rates ranging from 19.2 to 256 kbs for an MDS/ITFS system. A network having broadband channelization is needed in the Gulf in order to provide enhanced last mile connectivity to platforms. A cellular network does not fit the bill, nor do any of the other services mentioned

---

<sup>2</sup> Indeed, no commenter in this proceeding is opposed to licensing MDS/ITFS frequencies in the Gulf of Mexico.

by WCA.<sup>3</sup> Cellular networks are principally designed for mobile two-way voice, not high speed data applications. Further, the MDS/ITFS system provides a unique fixed-voice and data service where the customer's premises equipment is equivalent to an office telephone, not to a cellphone. Cellular and MDS/ITFS networks are distinct in the services they are best suited to provide and customers they serve.<sup>4</sup> Further, the MDS/ITFS digital point-to-multipoint system developed by PetroCom utilizes fewer antennas and less hardware than other systems while providing cost-effective, reliable service. The existence of test users on the system demonstrates the demand for MDS/ITFS services in the Gulf.

4. In contrast to WCA, Rig Telephones, Inc. dba DataCom ("DataCom") apparently believes that there is an abundance of demand for MDS/ITFS spectrum in the Gulf. DataCom proposes four MDS/ITFS licenses. DataCom Comments at 4. However, while DataCom

---

<sup>3</sup> WCA Opposition at 6.

<sup>4</sup> The study PetroCom submitted in WT Docket No. 97-112 addressed the issue of whether the Commission should allocate more Commercial Mobile Radio Service (CMRS) spectrum in the Gulf on a wide area basis. The Commission in that docket specifically requested a demand analysis to assist it in allocating CMRS in the Gulf. As noted, systems designed for mobile voice services are inadequate to provide packages that combine voice with high speed data services over one network. Thus, PetroCom's position is consistent that there is sufficient CMRS spectrum allocated in the Gulf on a wide area basis, but that an additional allocation of fixed spectrum with broadband channelization should be made. WCA fails to recognize this distinction. WCA Opposition at 7.

argues that PetroCom's proposal for two licenses is self-serving and unsupported, DataCom fails to provide any technical data demonstrating the viability of its four license proposal.<sup>5</sup> DataCom claims that auctioning four licenses simultaneously will "allow the marketplace to determine success and development of these [competing] technologies." DataCom Comments at 5. Nowhere, however, does DataCom show how the same result could not be achieved by licensing one or two MDS/ITFS licenses in the Gulf to compete with existing licensed spectrum.

5. WCA's claim that existing land-based MDS incumbent and BTA licensees have service areas extending into the Gulf does not show they are authorized to serve more than the few oil and gas platforms located within their licensed boundaries. WCA Opposition at 6. PetroCom's developmental licenses authorize it to provide service to platforms some of which are located more than 100 miles offshore, well beyond any legitimate boundary these existing licensees can reasonably claim for their authorized service areas.

**C. MDS/ITFS Licensing In The Gulf Will Not Jeopardize Land-Based Services**

6. As acknowledged in its Amended Petition, PetroCom fully recognizes that any wide area MDS/ITFS licensee in the Gulf will

---

<sup>5</sup> Coincidentally, DataCom is part of a group of four companies opposing extension of PetroCom's developmental license.

have to afford protection to existing incumbent and BTA licensees that use the same frequencies.<sup>6</sup> Indeed, PetroCom designed and has operated its developmental system in accordance with this concept. WCA's concerns about interference to land-based systems can be accommodated, just as similar concerns of incumbent MDS/ITFS licensees vis-a-vis BTA licensees have been accommodated. No one is suggesting that "the Commission turn around and effectively deny land-based licensees near the Gulf coast the ability to provide consumers the innovative broadband services possible under the new rules." WCA Opposition at 9. PetroCom in good faith addressed interference concerns in its Amended Petition, and will continue to do so in a rule making. PetroCom, for example, is prepared to analyze and accommodate WCA's concerns over the proper D/U signal strength ratios that should be used for interference protection. WCA Opposition at 10-12. Furthermore, PetroCom's continuing analysis of interference issues has led it to conclude that a Gulf auction winner should submit long form applications for MDS stations just like any other MDS BTA licensee. These and other important details can be worked out in the rule making proceeding, and WCA suggests nothing to the contrary.

---

<sup>6</sup> Amended Petition at 12, 14. The statement of WCA's engineer, attached to its Opposition, ignores these requirements.

**D. MDS BTA Licensee Do Not Have Protected "Reliance" Interests**

7. MDS BTA licensees bordering the Gulf do not have protected "reliance" interests as claimed by WCA. WCA Opposition at 13. Its "speculation" that PetroCom intentionally withheld their proposal until after the MDS auction is just that -- speculation. WCA conveniently omits the dates on which PetroCom filed applications for developmental licenses and its original rule making petition, both of which occurred well after the Commission established markets for wide area MDS licensing. Moreover, PetroCom is proposing wide area licensing for the Gulf on MDS and ITFS frequencies, a proposal that does not even fit the Commission's prior MDS-only wide area licensing plan.

8. WCA resorts to fabricating rights for BTA license holders that do not exist, such as the right to serve the entire Gulf of Mexico beyond clearly defined BTA boundaries. There is no support for extending such rights to BTA licensees. Further, the contention that bidders in the MDS BTA auction for markets bordering the Gulf somehow "relied" on there never being a neighbor in the Gulf to protect, and fashioned their bids with that distinctly in mind, is not supported by a single shred of independent evidence, but only by post-hoc rationalizations intended to give MDS BTA licensees something for free. Further, this so-called "reliance" is not justified by events that occurred

prior to the auction. Nothing in the MDS rules or the auction materials supports the idea that the Gulf (beyond state boundaries) was included as part of the bordering land BTAs. If the MDS BTA licensees had actually based their bids on the inclusion of the Gulf in their licenses, then prudence would have dictated that the licensees take some step to confirm this notion. As demonstrated by WCA's silence on this issue, no steps were taken.

9. DataCom "agrees that the Commission should permit licensing of [MDS and ITFS] frequencies in the Gulf of Mexico and should establish Rules to move toward auction of these frequencies as quickly as possible." DataCom Comments at 2.

**E. Propagation Conditions In The Gulf Are Manageable And Do Not Present A Bar To MDS/ITFS Licensing In The Gulf**

10. In its Opposition, WCA voices concern regarding the adverse consequences that could result from propagation conditions in the Gulf, particularly ducting and superrefraction. WCA Opposition at 21. Once again WCA fails to carefully read PetroCom's Amended Petition. If it had, WCA surely would have noticed that PetroCom cited studies which concluded that "[d]ucting occurs throughout much of the United States" and "that ducting is as likely to occur in southern Illinois and Alabama as it is in the Gulf." Further, "superrefraction is a predictable phenomenon whose interference effects like those of ducting can be reduced to



minimum levels with proper planning."<sup>7</sup> In short, concerns about interference between a land MDS BTA licensee and a Gulf MDS BTA licensee are not substantively different from those over interference between two neighboring MDS BTA licensees (or two neighboring cellular licensees) in southern Illinois. Land based licensees are bound to protect each other from interference and do so with a variety of techniques including frequency coordination, cross polarization, frequency offset, and directional antennas. Further, a significant part of the millions of dollars that PetroCom has invested in pioneering a wireless local loop system in the Gulf has been expended to resolve interference concerns.

11. PetroCom's proposal to maintain a  $-75 \text{ dBw/m}^2$  signal strength at the boundary is part of this effort is a reasonable accommodation of land based licensee's concerns over interference. Indeed, PetroCom's proposal provides even more interference protection to land-based BTA licensees than what the latter receive from each other. WCA's position amounts to claiming that land-based BTA licensees should have an absolute guarantee of no possibility of interference from a Gulf licensee, a standard that has never been applied to any service. It is patently unreasonable on its face because it means, in effect, "no Gulf licensee."

---

<sup>7</sup> Amended Petition at 16.

**F. Gulf MDS Auction Rules Should Permit Small Businesses To Effectively Compete For A License**

12. WCA and DataCom oppose PetroCom's proposal to set aside one license for small business and to auction only one license at a time. WCA Opposition at 26-29; DataCom Comments at 5. DataCom argues that instead of a small business set-aside, the Commission should provide bidding credits to small businesses competing in the auction. Id. at 5. While PetroCom advocated the use of a set-aside license, it concedes that there may be other methods, such as bidding credits, for permitting small businesses to effectively compete for licenses. However, should the Commission auction more than one MDS/ITFS license in the Gulf, PetroCom submits the better way to provide parity to small businesses is by way of set-aside. Such issues can be more fully addressed in a rule making.

**G. A One Year Buildout Requirement Is Not In The Public Interest**

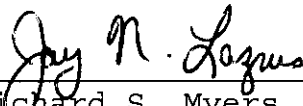
13. DataCom proposes that a Gulf MDS licensee should be required to buildout a system within one capable of servicing 80% of the Gulf population. DataCom Comments at 6. It simply does not make sense to require a Gulf MDS licensee to meet such a compressed build-out schedule, far in excess of what is required of a land MDS licensees or any other licensee of spectrum previously auctioned by the Commission. A one year buildout would force the licensee to hastily construct a system, without regard to quality of service

and would be an inefficient use of capital and resources. The Commission should follow buildout rules used for land licensees.

**H. PetroCom's Developmental Authorization Should Be Extended Until The Permanent Licensee Commences Operations**

14. PetroCom has been a pioneer in the development of a digital point-to-multipoint wireless local loop system using MDS/ITFS frequencies in the Gulf of Mexico. It was developing two-way services over these frequencies well before the Commission adopted two-way licensing rules for the MDS/ITFS spectrum. Given the time a rule making will take to establish permanent licensing rules for this service in the Gulf, PetroCom's developmental authority should be extended until the bidding process has been completed and permanent operations commence.<sup>8</sup>

Respectfully submitted,  
PETROCOM LICENSE CORPORATION

By:   
Richard S. Myers  
Jay N. Lazrus  
Its Attorneys

Myers Keller Communications Law Group  
1522 K Street, NW, Suite 1100  
Washington, D.C. 20005  
(202) 371-0789  
September 27, 1999

---

<sup>8</sup> See, e.g., Pinoak Communications, Inc., 13 FCC Rcd 12802 (Wireless Telecom. Bur. 1998).

CERTIFICATE OF SERVICE

I, Carla M. Swann, an employee of Myers Keller Communications Law Group, hereby certify that, on September 27, 1999, a copy of the foregoing REPLY COMMENTS was forwarded by U.S. First Class mail, postage prepaid to:

Barbara A. Kreisman, Chief \*  
Video Services Division  
Mass Media Bureau  
Federal Communications Commission  
445 12th Street, SW  
Room 2-B616  
Washington, D.C. 20554

Charles Dziedzic, Assistant Chief \*  
Video Services Division  
Mass Media Bureau  
Federal Communications Commission  
445 12th Street, SW  
Room 2-B616  
Washington, D.C. 20554

David Roberts \*  
Video Services Division  
Mass Media Bureau  
Federal Communications Commission  
445 12th Street, SW  
Room 2-A728  
Washington, D.C. 20554

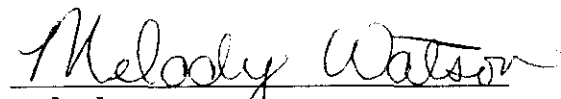
International Transcription Services, Inc. \*  
Portals II  
445 12th Street, SW  
Room CY-B402  
Washington, D.C. 20554

Matthew J. Plache  
Catalano & Plache, PLLC  
3221 M Street, NW  
Washington, D.C. 20007-3616

Paul J. Sinderbrand  
William W. Huber  
Wilkinson Barker Knauer  
2300 N Street, NW  
Washington, D.C. 20037

Steven J. Hamrick  
Fleischman and Walsh, LLP  
1400 Sixteenth Street  
Sixth Floor  
Washington, D.C. 20036

\* hand delivery

  
Melody T. Watson